



August 3, 2001

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
5219 McPherson, Suite 306
Laredo, Texas 78041

OR2001-3375

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150268.

The Clint Independent School District (the "district"), which you represent, received a request for the following information:

1. A complete copy of Arthur W. Daly's file.
2. A copy of the Board Meeting that took place on Monday, May 21, 2001.
3. A copy of the tape recording that was taken during the Board Meeting of May 21, 2001.

You state that you have provided to the requestor information responsive to request item 1. You claim that the remainder of the requested information is excepted from disclosure under sections 551.103, 551.104, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your arguments under sections 551.103 and 551.104 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Such information cannot be released to a member of the public in response to an open records request. *See* Open

Records Decision No. 495 (1988). Therefore, the district must withhold the tape recording of the closed meeting, attached as exhibit C, under section 552.101 in conjunction with section 551.104(c) of the Government Code. *See Id.*

You also claim that exhibit B is confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA") and section 552.114 of the Government Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See Open Records Decision Nos. 332 (1982), 206 (1978).* A student's handwritten statement is generally considered "identifying information." *See Open Records Decision No. 224 (1979).* This office generally applies the same analysis under section 552.114 and FERPA. *Open Records Decision No. 539 (1990).*

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In *Open Records Decision No. 634 (1995)*, this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We agree that all of exhibit B constitutes "education records" because it directly relates to students. Consequently, we find that all of the handwritten student statements in exhibit B are confidential under FERPA and must be withheld. *See Open Records Decision No. 224 (1979).* Furthermore, the additional information we have marked in exhibit B constitutes student identifying information that must be withheld under FERPA and sections 552.026 and 552.114 of the Government Code. However, we note that to the extent the information

relates to the requestor's child, FERPA gives the requestor a right of access to information that identifies the requestor's child. 20 U.S.C. § 1232g.

In summary, the district must withhold the tape recording of the closed meeting, attached as exhibit C, under section 552.101 in conjunction with section 551.104(c) of the Government Code. In addition, the district must withhold the information we have marked in exhibit B under sections 552.026 and 552.114 of the Government Code and section 1232g of Title 20 of the United States Code. The rest of the information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

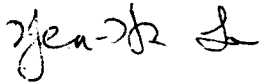
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le' with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 150268

Enc. Marked documents

bc: (w/o enclosures)